IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.MC.No. 2940 of 2007()

CC.611/2006 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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PETITIONER: ACCUSED 1-6:

1. MATHEW THOMAS, S/O. P.M. THOMAS,
   PUTHENPURACKAL, NR.SDA SCHOOL, VADAVATHOOR,
   KOTTAYAM.

2. THANKAMMA MATHEW, W/O.MATHEW THOMAS,
   AGED 63 YEARS, PUTHENPURACKAL, NR.SDA SCHOOL,
   VADAVATHOOR, KOTTAYAM.

3. ZACHARIAH MATHEW, S/O. MATHEW THOMAS,
   AGED 34 YEARS, PUTHENPURACKAL, NR. SDA SCHOOL,
   VADAVATHOOR, KOTTAYAM.

4. SUSAN MATHEW, W/O. SANJU,
   AGED 31 YEARS, PUTHENPURACKAL, NR. SDA SCHOOL,
   VADAVATHOOR, KOTTAYAM.

5. SHEEBA BINOY, W/O. BINOY,
   AGED 39 YEARS, PUTHENPURACKAL, NR. SDA SCHOOL,
   VADAVATHOOR, KOTTAYAM.

6. THOMAS MATHEW, S/O. MATHEW THOMAS,
   AGED 37 YEARS, PUTHENPURACKAL, NR. SDA SCHOOL,
   VADAVATHOOR, KOTTAYAM.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS: DEFACTO COMPLAINANT:

1. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. SIMI ZACHARIAH, D/O. P.I. CHACKO,
   P.45/4, DCA COMPLEX, DCA COLONY, DOLLOOR,
   BANGALORE CITY, KARNATAKA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2940 of 2007

Dated this the 28th day of November 2007

O R D E R

The petitioners, six in number, face indictment in a prosecution under Section 498A I.P.C. Cognizance was taken for the offences punishable inter alia under Section 498A I.P.C on the basis of a final report submitted by the police. The crime, in turn, was registered on the basis of a private complaint filed by the second respondent/ the de facto complainant. The petitioners are the husband of the de facto complainant and his relatives.

2. During the pendency of the proceedings, the parties have settled their disputes. The marital tie between the first petitioner and the second respondent has been dissolved as per Annexure A3 order. The second respondent has now re-married and is now residing with her husband. Parties have settled their disputes. In these circumstances, the petitioners have come before this court with a prayer that the prosecution initiated against them may be quashed. The petitioners submit that even during the pendency of the proceedings, Annexure A5 letter was issued by the second respondent to the police to inform them of the fact that all disputes have been settled between the parties and that amounts due have all been paid to her.

3. The second respondent has not entered appearance. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor confirms that the matter has been settled between the second respondent and the petitioners. The statement of the second respondent has been recorded by the police also. In these circumstances, the learned counsel for the petitioners prays and the learned Public Prosecutor endorses the said request that the proceedings initiated against the petitioners may now be quashed.

4. Offences alleged against the petitioners are not compoundable offences. The learned counsel for the contestants, in these circumstances, rightly rely on the decision of the Supreme Court in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. That decision is authority for the proposition that the interests of justice may, at times, transcend the interests of mere law and in such circumstances, the stipulations of Section 320 Cr.P.C cannot be held to fetter the sweep, width and amplitude of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. It would be harsh and unkind to insist on the appearance of the second respondent before this court now. She having severed all connections with the petitioners and having

taken up residence with her present husband elsewhere.

5. Normally, this court would have insisted on the appearance of the second respondent; but the learned Public Prosecutor submits that even before the investigating officer, this compromise has been reported and the statement of the second respondent has been recorded by the investigating officer. I am satisfied, in these circumstances, that it is not necessary to insist on the personal appearance of the second respondent.

6. In the result, this petition is allowed. C.C No.611/06 pending before the Judicial First Class Magistrate Court-III, Kottayam against all the petitioners is hereby quashed.

7. The learned counsel for the petitioners submits that a warrant of arrest issued against the third petitioner is pending now. The prosecution having already been quashed, needless to say, no process issued in C.C.No.611/06 can and need be executed by the respondents.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007